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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,169	12/19/2000	David W. Perrego	416-001	6758

7590 11/01/2005
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EXAMINER

THANH; QUANG D

ART UNIT PAPER NUMBER

3764

DATE MAILED: 11/01/2005

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/740,169
Filing Date: December 19, 2000
Appellant(s): PERREGO, DAVID W.

Neil F. Markva
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 01/15/2004 appealing from the Office action mailed 07/15/2003.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is partially correct. A correct statement of the status of the claims is as follows:

Claims 1-15 are rejected and are under appeal (Appendix B).

Claims 16-19 are withdrawn from consideration as being directed to a non-elected invention.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is partially correct.

In response to a petition filed on December 15, 2003 by which the petitioner has requested entry of the amendment after final action dated October 15, 2003, this petition has been considered under 37 CFR 1.182 and has been granted. Accordingly, the after final amendment dated October 15, 2003 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

WITHDRAWN OBJECTIONS AND REJECTIONS

The following grounds of objections and rejection are not presented for review on appeal because they have been withdrawn by the examiner:

Objections of claims 3 and 6-7 have been withdrawn in view of the entry of the amendment after final rejection filed on October 15, 2003.

Rejections under 35 U.S.C 112, first paragraph, of claims 4 and 15 have been withdrawn in view of the entry of the amendment after final rejection filed on October 15, 2003.

(7) Claims Appendix

In view of the entry of the amendment after final rejection filed on October 15, 2003, the copy of the appealed claims contained in the Appendix B to the brief is correct.

(8) Evidence Relied Upon

5,662,597	CHITWOOD	09-1997
4,205,665	BURTON	06-1980
4,890,640	NELSON	01-1990

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Chitwood (5,662,597). Chitwood discloses a gravity traction assembly (fig. 1) comprising:

(a) standing frame means 12/14/16/17/18 and torso harness means 66 coupled to depend downwardly from the frame means (fig. 1),

(b) the torso harness means 66 (fig. 1) being effective to maintain a person in a vertical traction suspension position after the person dons the harness means. Figs. 1-2 clearly show an adjustable inclined table 12 that can be inclined at angle of 80 degrees (col. 2, lines 26-29) , which would appear to be more vertical than Appellant's inclined table. The harness means of Chitwood would appear to place the user in an effective vertical traction suspension position by gravitational force.

(c) traction force focusing means 20 attached to the frame means for applying a predetermined amount of focused traction pressure directly to a selected location along the cervical region of the user's spine who is in the vertical traction suspension position (fig. 1).

Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Burton (4,205,665). Burton discloses an apparatus (fig. 2) for spinal traction therapy utilizing the force of gravity, the apparatus comprising:

(a) standing frame means 30/54/60/62/58 (fig. 2) and torso harness means 32 coupled to depend downwardly from the frame means (fig. 2).

(b) said frame means has a foot stop 93 (col. 5, lines 35-43 comprising a first surface means (upper platform 94) that is capable of supporting a non-traction person while standing to don the harness means. The foot stop also includes a second surface means (lower platform 96) that is capable of supporting a person while standing to adjust said harness means;

(c) the harness 32 being effective to suspend a person for a partial traction pressure when the person stand on the second partial traction lower platform 96 (fig. 2); and;

(d) the partial traction pressure being less than a full traction pressure applied to a person while in the vertical gravity traction suspension position.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7 and 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson (4,890,604).

Re claims 1 and 10, Nelson discloses a gravity traction assembly (fig. 7) comprising: (a) free standing frame means 119/120/122 (fig. 7, col. 6, lines 6-14), and (b) focused traction force means (or traction force focusing means) 147 adjustably (fig. 7, col. 6, lines 48-52) attached to or adjustable connected to the frame means (by engaging with the side rails 131,132, col. 6, lines 48-58) for applying a predetermined amount of focused traction pressure directly to a selected location along a user's spine (best seen in fig. 7), except that it does not include torso harness means coupled to flexibly depend downwardly from the frame means. However, Nelson suggests that a body strap (torso harness means) can be used if necessary or desirable (col. 7, lines 16-18) and the torso harness means being effective to maintain a person in gravity traction suspension position (fig. 2, col. 5, lines 40-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Nelson's apparatus, as suggested above, to include a torso harness means coupled to the frame means, for the purpose of securing the user relatively to the frame means (fig. 2, col. 5, lines 40-42) if necessary or desirable.

Re claim 7, Nelson discloses the frame means is free standing (fig. 7) and the focused traction force means 147 being effective to derive the pressure from a portion of the weight of the person in the vertical traction suspension position, with the person being vertically suspended with the harness means to produce the focus traction pressure (fig. 2 and 7 shows an adjustable inclined table that would place the user in a

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vertical traction suspension by gravitational force which depending on the degree of inclination as stated in col. 1, lines 48-50)

Re claims 11-14, Nelson discloses (claim 11) the frame means includes backboard means 144 (fig. 7) for supporting an upper body portion of the person girded with the harness means 43 and suspended in vertical traction suspension (fig. 2); (claim 12) the backboard means includes the traction force focusing means 147 having releasable tighten means 153 for selectively securing the focused traction force means to a plurality of vertical locations along the backboard means (fig. 7, col. 6, lines 50-58); (claim 13) the frame means includes a front rearwardly tilted frame portion including backboard means 144 (fig. 2 and 7) and the traction force focusing means 147 includes pad element means 150 (fig. 8, col. 6, lines 52-54) adjustably mounted to the backboard means and releasable tighten means 153 for selectively positioning the pad with respect to a person's spine; and (claim 14) the traction force focusing means is effective to direct a traction force equal to a fraction of the person's weight at the selected location along the spine (col. 1, lines 48-52).

Claims 2-6, 8, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson in view of Burton.

Re claim 2, Nelson discloses a traction assembly having all the features as claimed, except that it does not have a non-traction receiving surface means. However, Burton teaches an apparatus for spinal traction therapy utilizing the force of gravity. This apparatus has a foot stop 93 (fig. 5) comprising an upper platform 94 that

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can serve as a non-traction receiving surface means and a lower platform 96 as a safety device to help protect the user from falling if one of the support elements fails (fig. 5, col. 5, lines 35-43). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Nelson's apparatus, as suggested by Burton, to include a stand means with two platforms, for the purpose of providing a safety device to help protect the user from falling if one of the support elements fails (col. 5, lines 35-43).

Re claim 3, Nelson discloses that the predetermined amount of focused traction pressure is derived from the weight of the person who is in the traction position (col. 1, lines 48-50).

Re claims 4-6, 8 and 15, (claims 4 and 15) Burton further suggests that the amount of focused traction pressure is equal to about 40% of the weight of the person (see fig. 1, at 90 degree with full gravity traction, the load on the lumbar spine is about 30 kg with respect to a subject of 70kg); (claim 5) Burton discloses a stand means 93 including a non-traction receiving surface (upper platform 94) and a partial traction receiving surface (lower platform 96); the harness 32 being effective to produce a partial traction pressure equal to a desired percentage of a full traction pressure when the person steps from the upper platform to the lower platform (fig. 2); (claim 6) the desired percentage is about 20% (fig. 1, at a partial traction position of 40 degree, the load is about 14kg with respect to a subject of 70kg) of the full traction pressure of about 40% weight of the user; and (claim 8) wherein the selected location along the spine of the person includes an inflamed area of the person's back (col. 3, lines 25-35).

(10) Response to Argument

Regarding Appellant's argument with respect to claims 3 and 6-7, the objections of these claims have been withdrawn in view of entry of the amendment after final rejection filed on October 15, 2003.

Regarding Appellant's argument with respect to claims 4 and 15, the rejections under 35 U.S.C 112, first paragraph, of these claims have been withdrawn in view of entry of the amendment after final rejection filed on October 15, 2003.

***Whether Chitwood (U.S. Patent 5,662,597) anticipates claim 1 under 35
U.S.C. 102.***

In response to Appellant's argument that "Chitwood discloses no such harness means that depends downwardly from a standing frame means to produce the recited function. In contrast, Chitwood's harness is disposed along an inclined surface, and the user is never in a 'vertical traction' hanging position", the examiner respectfully disagrees. There is no difference between Chitwood's harness and Appellant's harness. Chitwood's harness is disposed along an inclined surface just like Appellant's harness being disposed along an inclined surface as shown in fig. 8 of the present invention. Moreover, Chitwood teaches that the inclined platform can be inclined up to an angle of 80 degrees (col. 2, lines 26-29) such that it would place the user in an effective vertical traction suspension position by gravitational force. There is no positively recited structural limitation of the harness means to define over Chitwood other than the intended use of "being effective to maintain a person in a vertical traction

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suspension position after the person dons said harness means". The harness means of Chitwood is capable of providing such a function.

In response to Appellant's argument that "a person merely reclining on the inclined Chitwood table 12 is not suspended as Applicant discloses and claims. So the Chitwood harness 60/66 is not 'effective to maintain a person in a vertical traction suspension position'", the examiner respectfully disagrees. Chitwood teaches that the inclined platform can be inclined up to an angle of 80 degrees (col. 2, lines 26-29), which is more vertical than Appellant's inclined platform, such that it would place the user in an effective vertical traction suspension position. Chitwood's standing frame is at an angle less than 90 degrees. Appellant's standing frame is also at an angle less than 90 degrees. The harness means of both inventions is a flexible member that is merely suspended from the standing frame to support the weight of the person. Appellant's traction force focus means is claimed to be placed any where along the spine. Chitwood's traction force focus means is placed at the neck or cervical area of the spine. There appears to be no clear positive structural limitation to define over Chitwood other than describing that in use the user is placed in a "vertical traction suspension position". That is the intended use of Chitwood. The Chitwood's device is intended to place the spine in traction. The intended purpose of both Chitwood and the Appellant's inventions is the same. It is not clear how the claimed structure define over Chitwood.

In response to Appellant's argument that "the occipital bone is in the posterior of the head and not in the spinal column as the examiner argues. So structure 20 is not a 'traction force focusing means'", the examiner respectfully disagrees. Appellant's attention is directed to Chitwood's fig. 3 and col. 4, lines 1-3, which clearly disclose that structure 20 has a portion 26 at the center "to fit and support the cervical curve of a patient's neck". The claim requires a "traction force focusing means" for "applying a focused traction pressure directly to a selected location along the spine". Since Chitwood's portion 26 of traction force focusing means 20 fits and supports the cervical spine (curve), and therefore it would comprehend the claimed limitation of applying a focused traction pressure directly to a selected location (cervical spine) along the spine.

It is not clear how much weight can be given to Appellant's argument that "it is impossible for the head receiving portion 20 to address any inflamed area in the lumbar location or any other selective location", since the claim language only requires a "traction force focusing means" for "applying a focused traction pressure directly to a selected location along the spine", and Chitwood's portion 26 of traction force focusing means 20 fits and supports the cervical spine (as explained above), therefore it would comprehend the claimed limitation of applying a focused traction pressure directly to a selected location (cervical spine) along the spine.

Whether Burton (U.S. Patent 4,205,665) anticipates claim 9 under 35

U.S.C. 102.

In response to Appellant's argument that "Frame means 54 is a rotating structure not a standing structure", Appellant's attention is directed to fig. 2, which clearly show

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the frame means being a standing structure. The frame means may include a rotating portion but is also is a standing structure. Moreover, Burton also teaches that the frame means can be positioned such that the patient will be suspended at 90 degrees angle (fig. 1) perpendicular to the horizontal plane of a vertical traction suspension position.

In response to Appellant's argument that "Burton's foot stop 93 does not have a surface to perform the claimed function, but is merely a safety device to help protect the patient from a fall if one of the primary support elements fails", it not clear how the appellant can disregard Burton's teaching, which clearly stated in col. 5, lines 35-37, that "As seen in fig. 5, foot stop 93 is constructed of an upper platform 94 and a lower platform 96". Each of these platform would clearly have a surface that is capable of performing the claimed function.

In response to Appellant's argument that "the donning of Burton's harness cannot be effected by the user but must be assisted by another person", it is noted that there is no support for this argument since Burton does not disclose that the user must be assisted by another person.

In response to Appellant's argument regarding claim 9 that "Burton shows many positions for a person on whom gravity is producing a traction force. But none of the positions finds a person hanging in a vertically disposed position against 'a traction force focusing means' Applicant claims", the claim language does not include a traction force focusing means and it appears that the appellant is arguing unclaimed feature. With respect to the limitation "a vertical traction suspension position", Burton clearly teaches that the frame means can be positioned such that the patient will be suspended

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at an angle of 90 degrees (fig. 1) perpendicular to the horizontal plane, thus would comprehend the limitation of "a vertical traction suspension position".

In response to Appellant's argument that "the Burton structure is incapable of 'performing (Applicant's) intended use' of its claimed stand means as the examiner alleges", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, Burton clearly shows a stand means 93 having a first surface 94 (upper platform) capable of receiving the patient standing and a second surface 96 (lower platform) also capable of receiving the patient standing (fig. 2).

Whether Nelson (U.S. Patent 4,890,604) renders claims 1, 7, and-10-14 to be obvious and unpatentable under 35 U.S.C. 103(a).

Regarding Appellant's argument that the reference Nelson does not maintain "a person in a vertical traction suspension position", it is unclear how the Appellant can disregard the teaching of Nelson that clearly discloses a gravitational traction device designed to use gravity acting on a patient's body and tending to pull the body downwardly along the inclined surface of the platform thereby maintain a person in a vertical traction suspension. Appellant's attention is directed to fig. 1, and col. 4, lines 19-27, which disclose that index holes 66 can be used to set the inclination of the

platform, such that the angle of inclination can be substantially perpendicular to the horizontal plane (if use the last hole on the right), thus would maintain a person in a vertical traction suspension position.

Regarding Appellant's argument that "Nelson's frame means 17 and 122 are not 'standing' or 'freestanding', no torso harness means perform Applicant's claimed functions; and the single wheeled trolley 147 provides no focused pressure to the prone patient's back", the examiner respectfully disagrees. Nelson teaches that the traction can be static (col. 7, lines 23-24) and that index holes 66 can be used to set the inclination of the platform, such that the angle of inclination can be substantially perpendicular to the horizontal plane (if use the last hole on the right), thus would comprehend the claimed language of 'standing' or 'freestanding'. Nelson also suggests that a body strap (torso harness means) can be used if necessary or desirable (col. 7, lines 16-18) and the torso harness means being effective to maintain a person in gravity traction suspension position (fig. 2, col. 5, lines 40-42). Nelson also teaches that trolley 147 supports and contacts the back (spine) of a user's. In the static position of the device, trolley 147 can be adjustably arranged to specifically support and contact a selected segment of the user's spine such that it would provide focused pressure to that particular segment.

Regarding Appellant's argument that "Applicant's traction force focusing means is connected to backboard means but the examiner alleges that the movably mounted trolleys are somehow equivalent to Applicant's fixedly adjustable traction force focusing means", it is noted that the claims only require the traction force focusing means

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"attached to" or "adjustably connected to" the frame means, and not "fixedly adjustable" as the appellant alleges.

Regarding Appellant's argument that "Nelson's 'wheeled trolley unit 147' is not 'effective to direct a traction force equal to a fraction of the person's weight at said selected location along the spine of said person' as in claim 14", the examiner respectfully disagrees. Nelson teaches that trolley 147 supports and contacts the back of a user's spine. In the static position of the device, trolley 147 can be spaced from and adjacent trolley in order to specifically support and contact a selected segment of the user's spine such that it would provide a traction force equal to a fraction of the person's weight to that particular segment (col. 1, lines 48-52).

In response to Appellant's argument regarding claims 11-14, the argument is not persuasive because Appellant merely alleges that Nelson's structures 144, 1743, 153, 150 are incapable of functioning as claimed and do not clearly point out how they cannot be functioned as claimed.

Regarding Appellant's argument that there is no suggestion to combine the references of Nelson in view of Burton, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, , Nelson discloses a traction assembly having all the features as claimed , except that it

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does not have foot stop. Burton teaches an apparatus for spinal traction therapy utilizing the force of gravity. This apparatus has a foot stop 93 (fig. 5) comprising an upper platform 94 that can serve as a non-traction receiving surface means and a lower platform 96 as a safety device to help protect the user from falling if one of the support elements fails (fig. 5, col. 5, lines 35-43). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Nelson's apparatus, as suggested by Burton, to include a foot stop with two platforms, for the purpose of providing a safety device to help protect the user from falling if one of the support elements fails (col. 5, lines 35-43).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

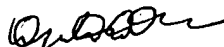
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October 24, 2005

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